

UiO : **Faculty of Law**
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Labour Conditions in Export Processing Zones and the Role of the ILO: Focus on Freedom of Association

Candidate number: 8021

Submission deadline: 01.09.13

Number of words: 17996

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September 2013

Abstract

Helped by the growing opening of markets and advances in transport and communication services, an export-based economy has been endorsed in many countries for some decades now. To this end, one of the tools used is named as ‘Export Processing Zones’, a special arrangement, where generous incentives of fiscal and administrative nature are offered to those investing in export oriented products or/and services. From its inception in the early 1960s, the alluring objectives it promises to achieve and indeed some practical gains it has delivered in areas as job creation explains its fast growth, predominantly in developing countries.

Nonetheless, criticisms against the scheme are also rife. Not only is EPZs’ economic feasibility questioned, but also under scrutiny is the quality of labour that it offers. Regarding the latter, it is alleged that many aspects of labour conditions in these zones are inferior in comparison to similar local firms and that countries are using such lax application of labour protection laws to stay competitive in attracting international investors. This triggers a question as to what actions are being taken in response to these concerns. As the International Labour Organization, a UN agency with a leading role in the global protection of labour, is arguably at the top of its kind to look to for some action and guidance, the thesis seeks to inquire what the Organization has been up to in this regard. It is within this context that it sets to review some working conditions in EPZs, examine the mandate of the ILO in this regard, and track and assess recent developments of action from the Organization concerning working conditions in EPZs, with a focus on Freedom of Association.

Acknowledgment

First and foremost, I would like to extend my deepest appreciation and gratitude to Professor Stein Evju, my supervisor, whose insightful guidance and unreserved patience was invaluable to the completion of the thesis. I also wish to express my love and gratitude to my beloved family and Netsyo for their endless care, support, and prayers. Tewedagey, you have been the reason that I kept going all the way. My dear friends including Samson Ede, Marie, Simret, Mericho, Helen, Mebrahtom, Tewelde etc. who made my stay in Oslo bearable and, indeed, memorable deserve my appreciation and heartfelt thanks. Lastly, special thanks goes to Bente Lindberg of the Law Faculty whose understanding and encouragement has been very helpful during my difficult times and, in fact, the entire course of writing the thesis.

Acronyms

EPZs: Export Processing Zones

EPZA: Export Processing Zones Authority

EU: The European Union

ICFTU: International Confederation of Free Trade Unions

ILO: International Labour Organization

MFA: Multifiber Agreement

MNEs: Multinational Enterprises

OECD: Organization for Economic Cooperation and Development

NAFTA: North American Free Trade Agreement

UN: The United Nations

UNCTC: United Nations Center on Transnational Corporations

VAT: Value Added Tax

WEPZA: World economic Zones Association

WFTU: World Federation of Trade Unions

WTO: World Trade Organization

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1 Chapter One: Introduction

1.1 Background

Growing liberalization of economies, fueled by increasing innovation in technology, communications and transportation has made international trading easier and faster. As such, the size of the trade is enormous and market competition stiff. With the aim to boosting their position in the competitive global market, businesses, Multinational Enterprises (MNEs) in particular, have been relocating their operations to areas that can fetch them better outcomes. Similarly, states have been working to attract foreign investment with a view to creating jobs, increasing exports and thereby obtaining foreign earnings, to mention some, by promoting their comparative advantages and offering many more incentives. 'Abundant and cheap' labour has long been considered as one of these advantages.

To this end, Export Processing Zones (hereinafter EPZs) are among the programs that many developing countries have endorsed for the last few decades. These are basically arrangements, where governments proffer special package of incentives to lure investors who are willing to produce mainly export-oriented products/services. Proliferated in their current modern forms in the early 1960s, EPZs now account for a good deal of share in exports and job creation in an increasing number of countries.

The growth in these schemes has attracted some academic and policy research works. Whereas the majority of the literature focuses on EPZs' economic feasibilities, there are modest studies concerning their social effects, labour conditions being one. In relation to the latter, it is common to find reports of inferior labour conditions in these zones with Freedom of Association topping the concerns. In response to these claims, the International Labour Organization, as a principal actor in the world of work, is the organ that one would primarily look for some actions. Accordingly, the need to inquire its

legal authority and structural suitability to get involved in light of the reported allegations arises.

1.2 Research Question(s)

The central issue of inquiry that the thesis sets to address is: how are labour conditions in EPZs placed in the works of the ILO in the last decade, with an emphasis placed on Freedom of Association? Of course, in the course of addressing the central question identified, some supplementary issues need to be dealt with as well. Included in the list will be what labour standards are of most concern in EPZs and their manifestations; whether the ILO has a mandate or/and bear an obligation to engage itself with working conditions in EPZs; and what tools can it utilize to carry out the mandate/duty and the like. The year 1998 will be taken as a point of departure as it marks some important developments of relevance, as will be explained later.

1.3 Justifications for the Study

The facts that EPZs are dominated by labour-intensive industries and, thus, host a considerable number of workers; that allegations of inferior labour conditions in these zones continue to come out; and that the ILO remains the single most important organ in the international regulation of labour primarily justify this study. Related to this, significant involvement of multinational corporations in EPZs and the fact that the products/services are primarily destined for the global market makes EPZs among the scenes that call for international regulation of labor, which, in turn, brings quickly the ILO into the spotlight.

1.4 Methodology

Primarily, the focus will be to map trends in the works of the ILO concerning working conditions in EPZs in the last decade or so along the major functions of the Organization. To this effect, issues of the constitutional mandate of the ILO and discussions on

the essence of some of the labor standards raised will necessitate a legalistic approach, where the laws and jurisprudence of the ILO will be greatly relied on. Discussions about EPZs and tracing developments in the works of the ILO on EPZs, on the other hand, will largely draw on literatures, reports and ILO data.

1.5 Structure of the Thesis

With a view to addressing the issues identified, the thesis is arranged into four chapters. Following this introductory section, the second chapter briefly introduces Export Processing Zones, where some of their salient features, brief historical account, and merits and concerns are sketched.

Having discussed EPZs in general, the third chapter ventures to deal with working conditions within these zones. Drawing on various reports, it reviews the implementation of some labour standards. The selection of the standards follows the trend in the relevant studies used, many of them arguably typical standards. Among the standards considered, Freedom of Association receives an extended review, mainly due to the fact that its implementation in EPZs is of the most concern.

The fourth chapter assesses how active the ILO has been in addressing working conditions in EPZs, with particular reference to Freedom of Association. After explaining why working conditions in EPZs are within the mandates of the ILO, the chapter seeks to highlight and map on how, through time, working conditions in EPZs played out in the works of the Organization. The search for trend in this regard is made along with the three main functions of the Organization, i.e., standard setting, supervision and technical cooperation/assistance. Moreover, the indicators used in the assessment include a number of cases involving working conditions in EPZs and reference to EPZs in questionnaire forms according to which state reports are made. The paper wraps up with some concluding remarks.

2 Chapter Two: Brief Sketch of Export Processing Zones

2.1 Describing Export Processing Zones

The fact that there are many terminologies conveying fairly similar concept has made the need to define EPZs all the more clear, but challenging at the same time. For instance, a recent study has come up with staggering thirty plus terms for roughly similar establishments and arrangements as used in different countries.¹ Among the commonly used names are Export Processing Zones, Free Trade Zones, Foreign Trade Zones, Free Zone, Special Economic Zones, *Maquiladors* etc.² Of these, the expression ‘Export Processing Zone’ was by far the most common one some three decades ago and was projected to become a standard term³, which nowadays seem to be the case given its dominant use in literature⁴ and ILO reports.

Below, some of the definitions offered are presented. In one of the early studies on the subject under the auspices of the ILO and UN Center on Transnational Corporations (UNCTC), EPZ refers to:

a clearly delineated industrial estate which constitutes a free trade enclave in the customs and trade regime of a country and where foreign manufacturing firms producing mainly for export benefit from a certain number of fiscal and financial incentives.⁵

In a similar tone, but with some additional specificity, the World Bank defines EPZ as “an industrial estate, usually a fenced-in area of 10 to 300 hectares that specializes in manufacturing for export.”⁶ It then goes on to list some common incentives these zones usually offer to the investors therein.

¹ Boyenge (2007)

² ILO/UNCTC(1988), p.4

³ Ibid. p.4

⁴ Jayanthaumaran (2003) p.52

⁵ ILO/UNCTC (1988) p.4

⁶ World Bank (1992) p.7

What stands out in both definitions is that an EPZ is a physically secluded, distinguishable enclave where goods/services are produced mainly for export. Besides, the definitions attest that the provision of various incentives for investors is a defining feature of EPZs. Moreover, manufacturing firms working in EPZs are foreigners as per the first definition. Some of these components seem to have some shortcomings when tested against current prevailing understanding and use of the term. The main difficulty pertains to the physical nature of EPZs portrayed. EPZs, in the first definition, are depicted as being fenced in and secluded areas. Such an understanding only represents some segment of present day EPZs and is thus narrow.⁷ In this regard, the qualification that this state of things is only the ‘usual’ one, as hinted in the second definition, is appropriate. Similarly, the description of EPZs in one of the above definitions as being reserved for foreign investors is an excessive generalization in that modest participation of domestic investors is also allowed in many EPZs, although the dominant visibility of foreign firms is undeniable.⁸

This said, the ILO has devised its own definition according to which its widely used data is collected. Accordingly, EPZs are “industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being exported again.”⁹ The main difference of such a description from the above definitions is that it does not claim EPZs to be designated and geographically secluded areas. Indeed, a single standalone company located anywhere in a country may work under an EPZ status provided it satisfies some specific requirements as is the case in Namibia.¹⁰ Thus, the expression EPZ, currently, refers both to the physical structure, where various industries produce goods and services mainly for export as well as to a special program or, to use Madani’s expression, a trade policy instrument¹¹, under which industries anywhere in a country work.

Yet, the ILO description, too, suffers from some crucial flaws. Among others, it does not exactly encapsulate the nature of various types of establishments that the ILO, in its own sur-

⁷ Ibid. p.3

⁸ Gordon (2000) p.66

⁹ ILO (1998a) p. 3

¹⁰ Endresen (2001) p.14

¹¹ Madani (1999) p.11

veys, considers as EPZs. For instance, in some EPZs, the input materials are obtained locally and in some other zones, a certain percentage of finished goods or/and services might be sold domestically.¹² Still, unlike what the definition suggests, it is not necessary that only foreign investors are involved in operating EPZs, as will also be shown later. In addition, it can be argued that the ‘special incentives’ mentioned under the definition are too broad to inform the modality and scope to enable us determine if a certain firm/industry is to be regarded as working under EPZ status and thus be subject to some regulatory interventions. Related to this, the definition also falls short of informing us the comparator. In other words, it is not clear if the incentives should discriminate between firms engaged in the same sector or it is sufficient for the incentives to pertain to some firms in the country and not others irrespective of the sector.

In light of these shortcomings, it appears to me that the definition is too loose to have a definitive meaning with a normative effect to guide actions. This is especially so, for instance, if we were to use it in a future legal standard specifically regulating working conditions in EPZs, in which case the definition adopted would ultimately determine the scope of the standard.

However, given the fact that this paper aims at examining the working conditions in EPZs and ILO intervention in this regard, it is only logical to mainly follow the ILO’s wider understanding as a working definition, with my reservations in mind. Thus, EPZs, in this paper, encompass different forms of arrangements, where firms, be those working under a fenced in complex or not, run mainly export oriented production under significantly preferable terms, compared to the rest of the economy.

In line with this and in the face of the difficulties concerning the definition, it is deemed imperative to briefly look at some common features of EPZs that are usually agreed upon. Drawing on relevant literatures and ILO reports, three features of EPZs stand out and are discussed below.

¹²Ibid. p.15

2.1.1 Export Oriented Production

As the name evidently tells, EPZs host industries that produce mainly export-oriented goods/services. From the very start, EPZs were one of the primary choices when many states opted for an outward oriented economic policy.¹³ Hence, their contribution to the total exports in many hosting states has been visible throughout. For instance, a report shows that from 2002-2006 EPZs' export shares continued to account for 80% and more of the national export in many of the countries surveyed though in some countries, like Cameron, the share was only around 32%.¹⁴

This being the prevailing fact, there are some exceptions to it. For instance, Brazil's Manaus EPZ is a good example. This zone was established with the main purpose of importing semi finished goods and transforming them for subsequent sale in the domestic market.¹⁵ For this reason, it has been labeled by some as 'import processing zone' instead.¹⁶ Besides, the Dominican Republic and Mexico allow up to 20% and 20-40% respectively of the EPZ products into their domestic markets.¹⁷

2.1.2 Generous Incentives

The wide range of incentives granted to EPZs investors is the other typical characteristics of the same. Though the types and extent (duration) of the incentives vary among countries, the ILO identified long list of them, including total or partial exemption of both export and import customs; exemption from direct and indirect taxes on profits, property tax and VAT; exemption from national foreign exchange controls; and free profit repatriation for foreign companies.¹⁸ Added to the list are free provision of enhanced physical infrastructure and streamlined administrative services.¹⁹ Furthermore, better possibility of foreign ownership of businesses; relaxed enforcement of labour and environmental laws and regulations; and privi-

¹³ Krueger (1980) p.288

¹⁴ Milberg (2008) pp.8-9

¹⁵ ILO/UNTCT (1988) pp.46-47

¹⁶ Ibid. p.46

¹⁷ Madani (1999) p.16

¹⁸ Milberg (2008) p.1

¹⁹ Ibid.

leged rules on the lease or purchase of land are additional incentives that host states usually offer to EPZ investors.²⁰ Given the wide array of incentives used, L. Farole's description of such zones as areas where '...the rules of business are different from those that prevail in the national territory'²¹ better catches the reality. As can be seen from the list, relaxing rules on labour has been one of the 'incentives' that states intentionally offer to potential investors in their EPZs, an issue of central importance to the thesis

Such policy of deep concessions from hosting states is said to be in response to, or at least matches, demands from investors. Related to this, studies in the 1970s and 1980s reveal that labor costs play a fundamental role in any policy for the redeployment of industrial activities in EPZs.²² Suffices to state here that this phenomenon highlights the legitimacy of labour conditions concerns in these zones, and hence the need to examine developments in this regard.

Before wrapping the section, it is worth to note that EPZ investment is also induced by other factors of production on which the host country has comparative advantages, including natural resources and its location. Regarding location, market access plays a central place for investors.²³ This may relate to the proximity of the host state to a potential market/customers or beneficial trade arrangements that the host country is a party to, as exemplified by the North American Free Trade Agreement /NAFTA/ or the Multifiber Agreement.²⁴ Other important considerations for investing in EPZs, obviously, include sound governance and size of the economy,²⁵ among others.

2.1.3 Labour Intensive Industries

The last, and equally important, marking feature of EPZs is that they are clearly dominated by labor-intensive industries. Indeed, job creation is one of the key stated objectives of

²⁰ Engman (2007) p. 17. Country specific incentives can be found at Endresen (2001) p.27

²¹ Farole (2011) p.23

²² Gordon (2000) p.67

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid. p.68

EPZs.²⁶ As such, despite contentions revolving around its quality, the sheer number of jobs created by EPZ is, usually, considered as one of their successes.²⁷ Related to this, ILO compilations reveal that there are 130 countries operating some 3500 EPZs, employing 66 million people, China being the major country in the expansion of EPZs activities and jobs created.²⁸

Labour intensive sectors like textile, clothing and electronics dominant many EPZs²⁹ to the extent that in Mauritius 94% of its EPZ workers are in the apparel sector.³⁰ This is still so even if their share has been on the decline due to the diversification of industries. For instance, in Jamaica and Barbados services like data entry and processing are common EPZ activities.³¹ Similarly, Indian EPZs have also extended their production of leather, food and electronic software apart from the dominant textile sector.³²

Besides the facts that apparel industry a labour intensive one and that its produces are easier to transport might explain why it has dominated EPZs activities, the Multifiber Agreement (MFA), which regulated trading of apparel products till 1995,³³ is considered as the other important reason for their boom in the 1970s.³⁴

2.2 Historical Background and Development of EPZs

Though similar establishments can be traced as back as the time of Roman Empire,³⁵ the Shannon Free Zone of Ireland is widely credited to be the first modern EPZ.³⁶ The advent of jet airliner which, unlike its predecessor, no longer needed to refuel on the transatlantic flight (in Ireland) led to the pressing decline of the Shannon International Airport.³⁷ In order to rescue jobs and give life to the airport and the national airline, the Irish authorities established a free zone

²⁶ Milberg (2008) p.8

²⁷ Gordon (2000) pp.68-69

²⁸ Milberg (2008) p.4

²⁹ Kreye (1987) p.14

³⁰ Milberg (2008) p.10

³¹ Gordon (2000) pp.66-67

³² Milberg (2008) p.10

³³ Naumann (2006) p.5

³⁴ Banda (2007) p. 31

³⁵ ILO/UNTCT (1988) p.1

³⁶ Engman (2007) p.11. See also World Bank (1992) p.25, Gordon (2000) p.63

³⁷ ILO/UNTCT (1988) p.1

around the airport with incentives to attract foreign investors who could produce industrial products of high values destined for export.³⁸ By and large, this innovative venture was successful in creating jobs and sustaining the airport and the airlines and, most importantly, in its impact on others.³⁹

In 1965, Taiwan became the first developing country to establish an EPZ and served as a model to other Asian developing countries.⁴⁰ Mexico and Poland followed suit from up north.⁴¹ Many African countries embraced EPZs relatively late but “count for much of the recent increase in the number globally.”⁴² Now, a commonplace nearly everywhere, with the developing countries dominating, EPZs have grown in number, size, as well as scope of industries they comprise.⁴³ Increased interest on the area has led the UN to the establish the World Economic Processing Zones Association that consists of governments experienced in the development such zones in 1978.⁴⁴ Reorganized as an independent, private non-profit organization since 1985, it aims at, among others, exchanging information, recruiting and training EPZ management, researching on trade and marketing, and representing EPZs’ interests before international bodies.⁴⁵ In passing, seeing the website that the organization currently runs, however, reveals that it is not really living up to the expectation, unfortunately.

This said, it is also imperative to note some changes that EPZs have undergone through time. In form, EPZs grew from their early fenced-in constellation of firms to include single industry/company⁴⁶ and an entire city/island as in the case of Mauritius⁴⁷ and Guangdong and Fujian provinces in China.⁴⁸ In others words, unlike in its early stage, currently, EPZ(s) refers to a status as much as the physical complex. Pertaining to changes in activities, as the the ILO aptly

³⁸ Ibid. p.1

³⁹ Ibid. pp.1-2

⁴⁰ Gordon (2000) p.63

⁴¹ Ibid. p.63

⁴² Endresen (2001) p.15

⁴³ ILO/UNTCT (1988) p.2

⁴⁴ WEPZA, available at <http://www.wepza.org/>

⁴⁵ Ibid.

⁴⁶ Milberg (2008) p.2

⁴⁷ Ibid. p.15

⁴⁸ McCallum (2011) p.6

noted, “EPZs have evolved from initial assembly and simple processing to include high tech and science parks, finance zones, logistic centers and even tourist resorts.”⁴⁹

2.3 Rationale: Arguments For and Against EPZs

The common objectives governments hope to achieve in promoting EPZs is succinctly put by Romero as follows:

Job creation, skill formation, the location of industry in depressed regions as well as a desire to boost foreign- exchange earnings, foreign direct investment (FDI) and export-led industrialization, have been the main considerations motivating governments to promote EPZs.⁵⁰

Some supplementary goals of EPZs can also be identified. For instance, Chinese EPZs were established in the socialist country with an explicit purpose of serving as “laboratories for experiments, where western technology and managerial methods carried out, while China itself simultaneously retained its socialist domestic economy.”⁵¹ In Thailand, moving industries out of Bangkok to overcome problems of congestion and pollution was one of the central objectives of the EPZs project.⁵²

In line with these noble objectives, many EPZ specific studies indicate some success stories, direct and indirect employment creation and contribution to host countries’ foreign earning by boosting exports being the usual gains topping the list.⁵³ These, indeed, have been the justification for the growth and diversification of EPZs.

On the other hand, there is growing dissatisfaction with EPZs, which often come in two ways. The first trend of criticism takes the form of discrediting the alleged gains of EPZs and second one highlights more socioeconomic downsides of the same, including labour conditions, as will

⁴⁹ Milberg (2008) p.2

⁵⁰ Romero (1995) p.248

⁵¹ Yuan (1992) p.1036. Chinese EPZs are also known for their diversity in type and sheer size that prompting many relevant ILO surveys to do a special entry

⁵² Engman (2007) p.16

⁵³ Milberg (2008) p.11

be discussed in subsequent chapters. On the former, one of the challenges has to do with the way the figures that support EPZ success stories is acquired. In relation to this, most cost benefit analysis studies are accused of being confined only to the economic analysis of EPZs and thus do not give a holistic picture.⁵⁴ For instance, Endresen and Jauch wonder how the cost of the deteriorating health of workers due to harsh working conditions could be included while computing costs.⁵⁵ The complaint here is that positive assessment of EPZs usually relies on supporting factors and excludes those that may negate results or taint the image. Besides, “counterfactual is not clear” as the OECD would put it, meaning that even if, for instance, exports and/or employment increase after the establishment of an EPZ is shown, this does not necessarily signify a cause and effect.⁵⁶ Moreover, some claim that some seemingly successful EPZs are only showcases heavily subsidized by the rest of the economy.⁵⁷ This is in reference to the direct and indirect costs that host countries incur to establish and subsidize zones as well as the forgone revenues resulting from extended tax exemptions. Sometimes, their economic worthiness is questioned. Backing this up, the World Bank, in its 1992 report estimated that only 40-50% of EPZs were successful, whereas 20-30% moderately successful and 30% unsuccessful.⁵⁸

Catalyst effect on the domestic economy through forward and backward linkage, being the other objective of EPZs, this, too, does not escape scrutiny in its implementation. It is argued that as EPZ investors, typically big multinationals, often have an already established partnership with qualified international input providers, they are less likely to use from the local economy, as hosting countries would hope.⁵⁹ In a similar token, technological spillover to the domestic economy has also been negligible due, mainly, to the fact that EPZ production has been low skill intensive for long time and that “[t]he technology is embodied in imported capital and the knowledge is embodied in the management staff.”⁶⁰ Lastly, the ease in repatriating profits from

⁵⁴ Gordon (2000) p.68

⁵⁵ Endresen (2001) pp.31-32

⁵⁶ Engman (2007) p.23

⁵⁷ Endresen (2001) p.31

⁵⁸ World Bank (1992) p.3

⁵⁹ Milberg (2008) pp. 20-21

⁶⁰ Ibid. p.21

EPZ operations undermines a core stated objective of EPZs, i.e., earning hard currencies to host countries,⁶¹ adding yet another source of skepticism for opponents.

Somehow related to this, it is worth to note that global financial institutions like the World Bank, the WTO system and regional trade arrangements have also been careful in supporting EPZs. The World Bank has long maintained that EPZs are only the second best policy to structural reform.⁶² Its cautious support, which was premised on the hope that EPZs would lead to progressive liberalization of the economy, is still half hearted, as many EPZs are being used to indefinitely delay economy wide reforms.⁶³ Similarly, the WTO trading system is also pressing against the incentive part of EPZs as it might amount to subsidy that contradicts many of its rules, notably the principle of equal treatment.⁶⁴ For similar reasons, the growing regional trade agreements are also putting more pressure on EPZs by primarily pushing for the exclusion of subsidies in EPZs.⁶⁵

To sum up, the many voices of concern suggests that EPZs are not living up to the multifaceted objectives that they promise to offer. However alluring their objectives might be, implementation seems to be far from ideal. Despite these challenges, however, many states have kept their existing EPZs; others are expanding, and still some are joining the rank.⁶⁶ Researches strongly suggest that EPZs are on the increase. It appears that for hosting countries, the actual or perceived positive contributions of EPZs out weight the drawbacks. Incidentally, this fact also means that researches into the area, like this thesis, remain relevant.

⁶¹ Engman (2007) p.23

⁶² Madani (1999) p.7

⁶³ World Bank (1992) p.3

⁶⁴ Milberg (2008) p.28

⁶⁵ Ibid. p.31

⁶⁶ Virgill (2009) p.68

3 Chapter Three: ILO Labour Standards and EPZs

3.1 Justifying the Inquiry

Having introduced the overall description of EPZs, this chapter sets to review the trend of labour conditions in these zones as documented in various studies. Before venturing to the main issue, though, a brief justification for the inquiry, some relevant methodological issues, and clarification of terms that recur throughout the chapter and indeed the thesis, would open the chapter.

To begin with, we ask why labour conditions in EPZs is an issue. As hinted above in passing, the query into the labour conditions in EPZs is justified on some accounts. First and foremost, reports of poor labour conditions that are specific to the nature of EPZs keep coming out, as will be discussed latter. Second, the fact that EPZs usually host labour intensive industries and hence employ a large number of people makes them a legitimate spot of concern regarding their labour conditions. In other words, to borrow the expression from the ILO, “labour costs [is] a large component of total costs”⁶⁷ leading for companies to see labour as a cost to contain.⁶⁸ Related to this, the fact that EPZ production is principally destined to the competitive international market reinforces the motive to contain labour costs so as to stay competitive. In addition, Romero contends that the frequent occurrence of fatal industrial accidents has cast further suspicion on EPZs and thus warranted for a critical look at their labour conditions.⁶⁹ These reasons, I believe, suffice to make the inquiry a worthwhile.

⁶⁷ ILO (1998) News, available at http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_007997/lang--en/index.htm

⁶⁸ Ibid.

⁶⁹ Romero (1995) p.248

3.2 Labour Standards, Labour Conditions, and Labour Rights: Clarification

It is common to come across expressions including ‘labour standards’, ‘labour conditions’ and ‘labour rights’ being used interchangeably.⁷⁰ Some clarification will, therefore, be helpful in the interest of consistent use.

Accordingly, the ILO thesaurus, which is used for indexing and retrieval by the its various organs, defines labour standard as “standards concerning employment and working conditions found acceptable by employers and workers through collective bargaining and by the legislator through labour laws and regulations.”⁷¹ Similarly, a prolific writer on the area describes labor standards as actual or proposed legal requirements whereas ‘labour conditions’ refer to the ‘actual working conditions’.⁷² In other words, while labour standards refer to the legal norms providing for minimum requirements,⁷³ ‘labour conditions’ signify the actual implementation of these requirements.

In line with this and within the context of the ILO, the main source of labour standards at a global level, ‘ILO labour standards’ mainly refer to all the positive laws regulating labour as contained in its Constitution, conventions, recommendations, declarations and protocols. The Organization, the only organ to outlive the defunct League of Nations, has been producing a great deal of such standards ever since its establishment as part of the treaty of Versailles in 1919. Accordingly, the ILO has thus far adopted 189 conventions, 202 recommendations, with some of them revised and others rendered outdated,⁷⁴ some protocols and declarations. The subject matters covered are also so pervasive, stretching from employment policy to labour administration; from those covering all employees to those pertaining only to specific category of workers like those working in road transport, seafaring, glass making e.t.c.⁷⁵

⁷⁰ Flanagan (2006) p.7

⁷¹ ILO, Thesaurus, available at <http://www.ilo.org/thesaurus/defaulten.asp>

⁷² Ibid.

⁷³ Given the fact that reservations are not, in general, allowed in ILO standards, unlike in human rights instruments, they provide minimum requirements with some degree of in-built flexibility.

⁷⁴ ILO, NORMLEX, available at <http://www.ilo.org/ilolex/english/subjectE.htm>

⁷⁵ The categorized list can be found at <http://www.ilo.org/dyn/normlex/en/f?p=1000:12030:3977985970486709::NO:::>

This said, the third related idiom, ‘labour rights’, is usually used in such a way to reflect entitlements by the working people in its abstract form and bears with it a universal claim. Instances include the four right and principles the 1998 Declaration provides. This being the common understanding, it sometimes is also used to refer to those standards of general nature that do not bear direct economic outcomes.⁷⁶

Hence, in this thesis ‘labour standards’ refers to the detailed instruments that the ILO has adopted, whereas ‘labour condition’ captures what is happening in the actual implementation of these standards and ‘labour rights’ is used when these standards or some of them are presented in the sense we use human rights – universally claimable entitlements to every worker or to workers of a particular industry/category. Taking Freedom of Association, in labour relations context, as an instance, the different relevant ILO instruments including Convention Nos. 87, 98, 154 would constitute the labour standards, whereas ‘Freedom of Association’ as a generic right emanating from these instruments would be an example of a labour right. The way these standards are being implemented, such as the unionization rate in a certain setting, on the other hand, represent a labour condition.

3.3 Some Methodological Issues: Reliability, Representation and Comparator

Applying secondhand studies of labour conditions in EPZs necessitates clarifying some methodological issues and perspectives, which may affect the validity of assessments and thus need to be born in mind. Three issues are identified in this regard, i.e., reliability and representativeness of study reports used and the comparator taken in assessing labour conditions in EPZs. To begin with, many of the reports available are produced or sponsored by various individuals and institutions and thus the possibility of partiality in these studies cannot be ruled out. For instance, it is not difficult to observe a notable difference in tone in the reports of the International Confederation of Free Trade Unions (ICFTU) and that of the World Bank on similar findings.

⁷⁶ Flanagan (2003) p.18

The second issue to note is that many of the data used in these studies might be far from reflecting the actual situation across the board for various reasons.⁷⁷

Furthermore, researchers take different positions about the point of reference in assessing labour conditions in EPZs.⁷⁸ In other words, there are differences as to what threshold to use against which labour conditions in EPZs should be tested. In this regard, two trends stand out. The first being to compare EPZ labour conditions with that of a comparable firm/s in the host country, the alternative is to instead use comparable firms in industrialized countries as a comparator.⁷⁹ The principal limitation with the first option is that there might not be comparable local firms to weigh against. For instance, this is the case where an entire island works under an EPZ status. As to the second option, it is convincingly argued that given “the large difference in per capita income, work patterns and alternative employment opportunities” taking firms in industrialized countries as comparators is unreasonable.⁸⁰

This said, it can be safely concluded that in the great majority of studies, the comparison is between working conditions in EPZs and that of similar domestic firms with no zone status. I believe the approach is a better choice. Not only does it admit the obvious difference of working conditions in different countries, it also rightly points to the ‘special incentive’ that EPZs receive unlike the remaining economy. Yet, some of its limitations should be conceded, including the difficulty of finding suitable representative local industries and the fact that the choice might amount to conceding to or, even worse, perpetuating inferior labour conditions, which is the case in most developing countries where EPZs are situated.

With this, we now turn to review what studies suggest about some labour conditions in EPZs. The choice of the limited number of the labour conditions discussed below is made in line with many of the studies consulted. It is worth noting from the outset that the legal bases and contours of the labour standards picked, except for Freedom of Association, are not discussed in the interest of space.

⁷⁷ Gordon (2002) p.71

⁷⁸ ILO/UNCTC (1988) p.83

⁷⁹ Ibid.

⁸⁰ Ibid.

3.4 Review of Some Labour Conditions in EPZs

3.4.1 Wage

It appears the majority of studies assert that EPZ firms usually pay higher wages than their comparable domestic sectors outside the zones. Studies by Romero, the OECD, and the World Bank, among others, suggest that the wage level in EPZs in general is above the average market outside the zones.⁸¹ For instance, EPZs in the Caribbean and Central America paid 5-20 % higher salaries than other domestic firms and in Malaysia the increase went up to 30%.⁸² A recent ILO study, which encompassed some of the major EPZ hosting countries, also strengthens the trend.⁸³ This being the dominant observation, some writers are skeptical as to why pay is higher in EPZs than in firms with no zone status. On this, Romero argues that higher productivity and payments for overtime works, a common scenario in EPZs, partly explain the seemingly higher wages.⁸⁴ In addition, the “perceived need to pay a wage premium to attract workers to EPZ companies with a reputation for harsh working conditions”⁸⁵ is cited as an additional pressure behind the better wage.

3.4.2 Discrimination against Female Workers

Discrimination against female workers has been the other major area of study in relation to EPZs. Female workers constitute the majority of workforce since early times of EPZs.⁸⁶ For instance, they make up to 90 percent of EPZ workers in Jamaica and Nicaragua, and account for 85 percent in Bangladesh and in Madagascar, they represent 75 percent of EPZ workforce.⁸⁷ Such a dominant presence means that the general conditions of work in EPZs have particularly strong relevance to female workers.

⁸¹ Endersen (2001) p.36

⁸² Madani (1999) p.45

⁸³ Milberg (2008) p.35

⁸⁴ Romero (1995) p.253

⁸⁵ Gordon (2000) p.73

⁸⁶ See ILO/UNCTC (1988) p.62, ILO (1998) p. 31, Gordon (2000) p.64, Milberg (2008) p.13

⁸⁷ ILO (2008a) paragraph.198

Various theories are advanced to explain the ‘feminization’⁸⁸ of employment in these zones. Among others, it is argued that female workers are chosen because “...they are cheaper to employ, less likely to unionize, and have greater patience for the tedious, monotonous work employed in assembly operations.”⁸⁹ In addition, perceptions that they are “hard working, easy to control and have nimble fingers”⁹⁰ are also cited as reasons. The less likelihood of them joining unions usually has to do with their family responsibilities.

The ILO has observed that women are often paid lower wages than men in EPZs.⁹¹ For instance, in Bangladesh EPZs there are clear discriminatory practices against female workers in assigning them to lower posts even if they are as well equipped as the men workers.⁹² Besides, it was also found out that women workers are paid lower while they are performing the same task as their men colleagues.⁹³ Similarly, ICFTU alleges that mandatory pregnancy test is a commonplace in the *maquilas* of Mexico, which usually results in denial of employment or mandatory resignation.⁹⁴ Employers’ reluctance to invest in the training of female workers and absence of facilities, which take into account specific needs of women’s health, are also sources of complaints.⁹⁵

Some, however, are less cynical as to why female workers are paid lower. According to Romero, for instance, this appears to result from “gender-based biases with respect to the recruitment and promotion of staff,” where employers tend to hire men for technical and managerial posts whereas female workers are assigned to production lines and thus earn lower payment.⁹⁶ Leaving the motives of EPZ employers in hiring female workers aside, how do female workers fare in EPZs?

Lastly, the gloomy working conditions for female workers in EPZs being a source for concern, we are reminded that women are “...the unintended beneficiaries of the formation of EPZs,

⁸⁸ Milberg (2008) p.12

⁸⁹ Ibid. p.13 (citing Safa (1994, p. 258) Madani, (1999) p.37

⁹⁰ Dror (1984) p.713

⁹¹ ILO (2008a) para.198

⁹² ILO (1998) p. 32

⁹³ Ibid.

⁹⁴ ICFTU (2004) p.11

⁹⁵ Milberg (2008) p.32

⁹⁶ Romero (1995) p.255

since many might not have sought formal market employment were it not for them.”⁹⁷ However, it does not take a genius to note that the creation of employment for women, though to be welcomed, by no means justifies inferior labour conditions.

3.4.3 Occupational Safety and Health Conditions

The other working condition, which is often taken up for assessment in EPZs is occupational safety and health conditions in relation to which these zones score mixed assessment as compared to similar local firms. Some claim that the performance of EPZ firms in this regard vary depending on the regulatory framework in the host country, the size, age and type of industry, and company policy, among other things.⁹⁸ For instance, it is argued that bigger firms with larger-scale operations usually provide better safety measures compared to smaller firms.⁹⁹ In terms of sectors, the garment and electronics industries are more vulnerable to occupational hazards than others.¹⁰⁰

Tragic accidents, which claimed heavy death tolls from fire, suicides and respiratory problems in EPZ and other firms alike, have been brought to public attention. However, the fact that labour inspection is particularly rendered difficult in EPZs means that the problem is worse in these zones.¹⁰¹ Yet, the fact that big multinationals with better expertise dominate EPZs firms seem to give them some leverage to set the deficit off. Reflecting the mixed performance, the ILO would state, “[N]o statistics are available to show whether occupational accidents or diseases are more or less frequent in EPZs than in other enterprises.”¹⁰²

3.4.4 Working Hours

Working hours is yet another labour standard in relation to which comparison between EPZs and other domestic firms is frequent. An earlier study, which assessed EPZs in 14 major EPZs

⁹⁷ Madani (1999) p.38

⁹⁸ Romero (1995) p.258

⁹⁹ Ibid. p.253

¹⁰⁰ Madani (1999) p.48

¹⁰¹ ICFTU (2004) p.15

¹⁰² ILO (2012a) p.12

hosting countries, admitted that working hours is one of the principal areas on which EPZs are severely criticized.¹⁰³ It, however, argued that the composition of workers, i.e., predominantly young women, is causing the problem to be on the spotlight and not “because of inherently more adversarial labour relations.”¹⁰⁴

There seems to be a solid finding that shows that excessive working hours is rather more common in EPZs, compared to other local firms. For instance, Romero observed that long hours of work, mainly through overtime, is a problem in many zones.¹⁰⁵ The same conclusion is reached in a recent study conducted under the auspices of the ILO.¹⁰⁶ Accordingly, a survey of EPZs in Sri Lanka, Madagascar, and China reveals that zones do require overtime works exceeding the legal limits.¹⁰⁷ Moreover, ICFTU has published more damning reports of mandatory and excessive overtime works in some EPZs located in Lesotho, Madagascar, China and Taiwan.¹⁰⁸

The principal factor explaining such longer working hours has to do with the nature of many EPZ industries, which have rigid shipping deadlines¹⁰⁹ and usually set unrealistically high production targets.¹¹⁰ This said, an important cautionary remark is in order concerning the delicate nature of overtime work. It is asserted that the excessive overtime work might not always be blamed on employers as workers are sometimes eager to do more overtime jobs and indeed complain of favoritism in allotment.¹¹¹

In addition to the above labour conditions, lack of opportunity for career development¹¹² is the other concern that EPZs are associated with and can be attributed to various factors. Among others, due to deplorable working conditions labour turn-over is very high in many EPZs.¹¹³ For instance, a study on Mexican EPZs found out that due to such conditions, only 40% of the

¹⁰³ ILO/UNCTC (1988) p.85

¹⁰⁴ Ibid. p.88

¹⁰⁵ Romero (1995) p.257

¹⁰⁶ Milberg (2008) pp.34-35

¹⁰⁷ Ibid. p.34

¹⁰⁸ ICFTU (2004) p.12

¹⁰⁹ ILO/UNCTC (1988) p.34

¹¹⁰ Romero (1995) p.256

¹¹¹ Ibid p.257

¹¹² Gordon (2000) p.72

¹¹³ Madani (1999) p.42

workers stay more than three months in their job.¹¹⁴ Related to this, researches show that in many EPZs short-term contracts are used to facilitate flexible hiring and firing and in order to avoid costs such as maternity and redundancy pay¹¹⁵ and thus an infringement on workers' career development. Lastly, career development of workers is compromised, since the production process in the majority of EPZ is a low-tech one. Meaning, workers' productivity stagnates after acquiring the required skills as higher technology is less likely to come in,¹¹⁶ at least until recently.

3.5 Freedom of Association and EPZs

3.5.1 Freedom of Association: General

This section discusses Freedom of Association and its implementation in EPZs in a relatively detailed manner. The emphasis on this particular labour right can be justified on the following accounts. Firstly, it forms part of the four core labour rights and principles that the ILO identified in its 1998 Declaration on Fundamental Principles and Rights at Work.¹¹⁷ The Declaration, with its own Follow-Up, dictates that "...[M]embers, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize..."¹¹⁸ the rights and principles identified. Indeed, the special role of unionization for the protection of other rights has led the ILO to adopt a special supervisory mechanism for it unlike any other standard, as discussed below. Such an elevated status of the standard would, therefore, partly justify the selection. Secondly and related to the first, even if the four core standards have a lot in common, it is asserted that infringements on Freedom of Association is more common than the others.¹¹⁹ Lastly and most importantly, the implementation of the freedom is a far more vivid concern in EPZs as various studies reveal.¹²⁰

¹¹⁴ ICFTU (2004) p.9

¹¹⁵ Ibid. p.10

¹¹⁶ Madani (1999) pp. 42-43

¹¹⁷ ILO, 1998 Declaration, paragraph.2 (A-D)

¹¹⁸ Ibid. paragraph 2

¹¹⁹ Elliott (2003) p.17

¹²⁰ For instance, see Gordon (2000) p.47, Endresen (2001) p.38, Romero (1995), p.260, Milberg (2008) p.51

The notion, Freedom of Association, is visible in both typical human rights discourses and the field of industrial relations.¹²¹ In relation to the first, it suffices to mention that it, often coupled with freedom of assembly, is to be found in all core international human rights instruments, albeit some differences in scope. Indeed, in the words of the US Supreme Court, the freedom, deriving its validity from the First Amendment,¹²² is “...closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.”¹²³

In the sphere of labour relations, Freedom of Association, which applies to both workers and employers, is considered to be among the most important labour rights, and yet at the same time the most controversial one.¹²⁴ Its importance lies in its contribution for the enjoyment of other rights by strengthening the right holders’ bargaining power in advancing their respective interests.¹²⁵

An important right as it is, Freedom of Association is also fraught with controversy. Among others, it shares many of the theoretical objections advanced against the catalogue of socio-economic rights as the freedom, in the context of industrial relations, is usually characterized as such.¹²⁶ Apart from this, its alleged incompatibility with personal liberty in general and freedom of contract in particular by distorting the market relations between employees and employers poses a strong challenge.¹²⁷ In line with this, some argue that Freedom of Association is likely to set an above-market wage by unduly favouring workers.¹²⁸ As a result, a sort of compromise is readable in its current status. Accordingly, even if the right has long been considered as a pillar labour right, its details lack consensus.

¹²¹ Ferdinand (1987) p.7

¹²² Ibid.

¹²³ Shelton v. Tucker (1960) 364 U.S. 479

¹²⁴ Kimberly (2003) p.12

¹²⁵ ILO (2012a) paragraph 49

¹²⁶ Ben-Israel (1998) p.13-33 discusses various forms of objections.

¹²⁷ Ibid. p.10

¹²⁸ Maskus (1997) p.31

3.5.2 Freedom of Association and the ILO

Freedom of Association is prominently placed in both legal and institutional settings of the ILO. To begin with, it is identified as one of the standards that need an urgent improvement in the very preamble to the ILO Constitution,¹²⁹ and is among the few principles on which the Organization is based.¹³⁰ Furthermore, as just hinted above, the 1998 Declaration upholds the freedom to be one of the four fundamental rights and principles. Institutionally, it commands a unique and permanent supervisory mechanism that does not feature on other standards. Thus, the Committee on Freedom of Association (CFA or the Committee hereinafter) was established in 1951 for the purpose of examining complaints about violations of Freedom of Association, whether or not the country concerned had ratified the relevant conventions.¹³¹ Notwithstanding the lack of constitutional basis, the Committee has successfully claimed jurisdiction on all ILO members by reading the Constitution and the appended Philadelphia Declaration of 1944 to that effect.¹³²

What then are the salient features of Freedom of Association? Among the host of relevant ILO instruments, two conventions namely, Conventions No. 87 and No. 98, as clarified over the years, take central place in defining the contours of Freedom of Association. Speaking of clarification, the works of ILO supervisory organs stand out even though the International Court of Justice is the only organ invested to provide authoritative interpretation of the ILO Constitution and conventions as per Art.37(1) of the Constitution.¹³³ In this regard, the role of the Committee of Experts on the Application of Conventions and Recommendations and the CFA, with a very broad convergence of views,¹³⁴ is visible. This notwithstanding, the facts that the CFA is a tripartite organ and is specifically tasked with handling complaints solely on Freedom of Association puts it in a better position to do the job better and thus more attention is attached to its deci-

¹²⁹ ILO Constitution, Preamble, paragraph 2

¹³⁰ ILO, Philadelphia Declaration, (1944) Part I (2)

¹³¹ Haas (1970) p.27

¹³² Ibid. 27-28

¹³³ Kuafmann (2006) p.53

¹³⁴ ILO (2012a) paragraph 52

sions that it periodically publishes as a digest. As a result, the last digest that came out in 2006, is heavily used in discussing the salient features of the right below.

3.5.3 Freedom of Association: Major Constituents

To begin with, the freedom extends to workers and employers alike in both their individual capacity and collectively. It is usually treated as constituting three interrelated themes, namely right to organize, collective bargaining and the right to strike,¹³⁵ as briefly discussed below.

3.5.3.1 Right to Organize

Freedom of Association primarily recognizes the right of both workers and employers, without distinction whatsoever, to join organizations of their choosing without previous authorization.¹³⁶ This right not only enables the right holders to join an already established organization but also to establish one,¹³⁷ and at different levels. It applies to all workers and employers without a distinction based on occupation or otherwise, unless explicitly provided for under the conventions. As such, the provision delimits the scope of the right. The Committee in its decades long of decision-making has demonstrated that the right is extended to employees of both private and public sector;¹³⁸ and permanent as well as temporary workers including workers undergoing period of work probation.¹³⁹ Moreover, the relevance and application of the right to workers who usually face difficulties enjoying the right including those working in EPZs have been specifically mentioned.¹⁴⁰ Of course, the two conventions leave Member states to determine the extent to which the guarantees recognized under the same are applied to the armed forces and the police.¹⁴¹ As an exception, though, this permissive provision shall be construed restrictively and in case of doubt, workers shall be treated as civilians.¹⁴² On a similar note, the Committee remarks

¹³⁵ Ben-Israel (1998) p.27

¹³⁶ ILO Convention No. 87, Art.2

¹³⁷ ILO, Digest (2006). For instance read paragraphs 210, 211, 213, and 214

¹³⁸ Ibid. paragraph 209

¹³⁹ Ibid. paragraphs 255 and 256

¹⁴⁰ Ibid. paragraphs 264-266

¹⁴¹ Convention No. 87 Art.9(1) and Art.5 (1) of Convention No. 98

¹⁴² ILO, Digest (2006) paragraphs. 223 and 226.

that denying managerial or supervisory employees from joining a workers' union could only be justified if they are '...persons who genuinely represent the interests of employers.'¹⁴³

The other important element of Art.2 (Convention 87) is that the right to form or/and join a trade union shall not depend on prior authorization, lest the right would be a 'dead letter', as the Committee would put it.¹⁴⁴ However, this does not exempt unions from observing formalities concerning publicity or other similar formalities as prescribed by law as far as "...these formalities should not be of such a nature as to impair the free establishment of organizations."¹⁴⁵

After the establishment of a union, Freedom of Association translates itself to require that unions are free to draw up their constitutions, elect their leaders and decide their structures and programs to further and defend the interests of their respective members.¹⁴⁶ Understandably, the union leaders have an extended protection as their intimidation, demotion, expulsion, or an otherwise harassment hampers the free functioning of unions. The protection not only demands the government not to interfere or otherwise obstruct the free formation and functioning of unions, but also stands against similar acts of interference by employers over workers and vice versa.¹⁴⁷

Anti-discrimination clauses, at both individual and union levels, have also made their way to the conventions, with workers as the main beneficiaries. As such, workers are protected against prejudicial consequences on account of their union membership.¹⁴⁸ Incidentally, it is worth noting that the realm of the anti discrimination provision is wide enough to cover potential workers against making their employment "... subject to the condition that [s] /he shall not join a union."¹⁴⁹

Non-discrimination among competing unions also is well grounded in the jurisprudence of the Committee. However, as an exception and provided that selection is done based on pre-

¹⁴³ Ibid. paragraph. 248

¹⁴⁴ Ibid. paragraph.272

¹⁴⁵ For instance. Ibid. Paragraph.276

¹⁴⁶ Convention No. 87 Art.3 cum Art.9

¹⁴⁷ Convention No. 98, Art.2(1)

¹⁴⁸ Ibid. No. 98, Art.1(2)(b). Also see Digest, Paragraphs 781 and 1054

¹⁴⁹ ILO Convention No. 98 Art.1(2)(a).

established, precise and objective criteria,¹⁵⁰ some unions can be recognized as ‘most representative’ and thereby participate in collective bargaining, consultation and delegation to international organizations.¹⁵¹

3.5.3.2 Collective Bargaining

As an essential element of Freedom of Association, collective bargaining basically serves as a means whereby workers union/s and employer/s organizations would freely negotiate and agree on various terms of employment. The ILO Convention No.98 and its accompanying Recommendation detail its confines and extend the provisions enshrined under Convention No. 87. It should be noted, though, that even if unionization is an obvious advantage to have strong collective bargaining power, nevertheless it is not mandatory as non-unionized employees can also bargain in the absence of a union.¹⁵²

The Committee strongly underlines the voluntary nature of negotiations and demands minimal state intervention in the process. To this end, compelling the parties to enter into collective bargaining; drafting agreements; and mandatory ministerial approval of agreements are all considered to run counter to the principle.¹⁵³ Further, the Committee of Experts concluded that “[I]t cannot ... be deduced from the ILO’s Conventions on collective bargaining that there is a formal obligation to negotiate or to achieve a result (an agreement.)”¹⁵⁴ Such an observation that truly reveals the voluntary nature of collective bargaining would have a strong ramification on the importance of further actions by the parties including strike, as discussed below.

Regarding the scope of collective bargaining, the Committee opted for an extended interpretation. Among others, it held that “...with the sole possible exception of the armed forces and the police and public servants directly engaged in the administration of the State,” all public servants should enjoy collective bargaining rights.¹⁵⁵ Further, among the contested areas, which

¹⁵⁰ ILO Digest (2006) paragraph.348

¹⁵¹ Ibid. paragraph.354. Art.3(5) of the ILO Constitution also extends a recognition to such an arrangement.

¹⁵² ILO Recommendation No.91, Art. 2(1)

¹⁵³ See Digest, paragraph. 926, 1002, 1012, and 1017.

¹⁵⁴ Gernigon (2000) p.28

¹⁵⁵ ILO Digest, paragraph. 892 cum paragraph.920

came to the attention of the Committee, explicit ruling has been rendered on the application of collective bargaining with regard to the education sector, contract employees, and local embassy workers.¹⁵⁶ Likewise, with the exception of few issues such as those “...which clearly appertain primarily or essentially to the management and operation of government business” and educational policies as such, almost any work related matter could be negotiated by the concerned parties.¹⁵⁷

3.5.3.3 The Right to Strike

The right to strike is the third important offspring of Freedom of Association. It is true that ILO Conventions and Recommendations do not specifically safeguard the right to strike as attempts to codify it in the pillar conventions did not materialize. Some theories are offered explaining this failure. The first reason has to do with the prevailing assumption during the conferences leading up to the adoption of the pillar conventions that guaranteeing Freedom of Association in the conventions was sufficient to secure the right to strike.¹⁵⁸ Based on this calculation and strangely enough, worker representatives thought that “... specifying a right to strike would also lead to its restriction”, which led them to also stand against its specific inclusion.¹⁵⁹ A second and a related theory emanates from differences in details and application of Freedom of Association amongst countries during the 1940’s, which meant that detailed provisions were not welcome, including on right to strike.¹⁶⁰ As a result, every time a proposal was made, the right to strike was brought up only in relation to the voluntary conciliation and arbitration procedures.¹⁶¹

These challenges albeit, the right to strike is not completely devoid of legal basis. Among others, it is mentioned or implied in certain ILO instruments, albeit in passing.¹⁶² In addition, it is also worth noting that the ICSECR,¹⁶³ under some conditions, does recognize the right, as does

¹⁵⁶ See ILO Digest, paragraphs 900, 898 and 905

¹⁵⁷ See Ibid. Paragraphs 920-923

¹⁵⁸ Ben-Israel (1998) p.45

¹⁵⁹ Ibid. p.46

¹⁶⁰ Ibid. p.37

¹⁶¹ Wisskirchen (2005) p.285

¹⁶² Art.4 and 7 of Recommendation No.92 and Art.12 of Recommendation No. 83 are among the notables in this regard.

¹⁶³ ICESCR Art.8(1)(d)

the European Social Charter.¹⁶⁴ A recognition of the right is also to be found in ECJ decisions, despite allowing some limitations to ensure free market in Europe is not hindered.¹⁶⁵

However, it is the extensive instruments of the ILO supervisory bodies that now serve as the central legal basis for the right to strike. According to the ILO Experts Committee, the right to strike can be deduced from Arts.3 and 10 of Convention No.87.¹⁶⁶ The CFA has also long considered the rights as ‘an intrinsic corollary’ to the right to organize given its crucial importance with which workers can defend their economic and social interests.¹⁶⁷ The appropriateness of such an inference is, however, contentious.¹⁶⁸

Against such fallible legal ground, the CFA has detailed the contours of the right. Accordingly, the right not only refers to practical work stoppage, but also includes actions like workplace occupation and go slow action.¹⁶⁹ The Committee deems these actions legal up until they cease to be peaceful.¹⁷⁰ Further, the right to strike principally protects workers against legislative or other forms of restriction by the government as well as hostile measures of employers against striking workers, for instance by hiring replacement workers during such an action. Besides, the circumstance under which the right to strike can be legitimately banned is very limited. According to the Committee, prohibition of a strike can only be justified in case of public servants “...exercising authority in the name of the State or of workers in essential services in the strict sense of the term.”¹⁷¹ These services are defined as those “...whose interruption could endanger the life, personal safety or health of the whole or part of the population.”¹⁷²

However, despite the efforts of the supervisory bodies, Freedom of Association and the right to strike in particular is the most complained about standard and with little consensus. It is stated

¹⁶⁴ European Social Charter (Revised) Art. 6(4)

¹⁶⁵ Fabbrini (2012) p.3

¹⁶⁶ Wisskirchen (2005) p.283. Such a conclusion is challenged based on the Vienna Convention on the Law of Treaties.

¹⁶⁷ ILO Digest (2006) paragraphs. 522-523

¹⁶⁸ Wisskirchen (2005) pp. 283-284

¹⁶⁹ Gernigon (1998) p.12

¹⁷⁰ ILO Digest, paragraph 545

¹⁷¹ ILO Digest, paragraphs 541, 564, and 576

¹⁷² Ibid.

that in 90 to 98 per cent of cases involving the right, the Committee of Experts found infringement of Convention No. 87.¹⁷³ It has also been a bone of contention between employers and workers in ILO forum,¹⁷⁴ the former challenging the recognition of the right to strike altogether. This was, for instance, evident during the ILO 2013 Conference. Employer representative in the Conference Committee ferociously denied that the right to strike can be found in Convention No. 87 and that the Committee of Experts has no mandate to provide any interpretation in this regard.¹⁷⁵ Such divergence of stand in the social partners at ILO Conference is also reflected in state practices.¹⁷⁶

Having considered some of the salient manifestation of Freedom of Association, we now proceed to have a brief look at what surveys reveal about its implementation in EPZs.

3.5.4 Freedom of Association in EPZs

As shown above, given the fact that legitimate restrictions on union rights including the right to strike are very limited, workers in EPZs are as equally entitled to form or/and join unions, collectively bargain and strike, as other workers. Regarding the right to strike, for instance, the strict interpretation that the Committee adopted for a service to qualify as ‘essential’ and thus be subject to a justified ban means that industrial action is a legitimate action in EPZs too.¹⁷⁷

Against this background, it is asserted that Freedom of Association remains to be ‘the most frequent observation made by workers’ organizations¹⁷⁸ and have been as a result a ‘rallying-cry’ for calling attention to EPZ working conditions.¹⁷⁹ Both scholars and organized bodies identify unionization among the top challenges to implement in EPZs.¹⁸⁰

¹⁷³ Wisskirchen (2005) p.283

¹⁷⁴ Ibid. p.288

¹⁷⁵ ILO (2013), paragraph 82

¹⁷⁶ Fabbri (2012) provides a comprehensive analysis of current practices of the right to strike in some European countries.

¹⁷⁷ See for instances, ILO Digest, paragraphs 585 and 587

¹⁷⁸ ILO (2008) paragraph 196

¹⁷⁹ Romero (1995) p.262

¹⁸⁰ For instance, See Gordon (2000) p.47, Endresen (2001) p.38, Romero (1995 p.260 ILO (2008) p.5, and ICFTU (2004)

The restrictions on the right in EPZs take various forms. While some of them are typical to EPZs, others are equally applicable to non-EPZs industries as well. A clear instance of the latter is that of China, where all trade unions are by law required to be affiliated to the All China Federation of Trade Unions that obviously restricts the union rights of workers in EPZs and non zones alike.¹⁸¹

Focusing on the obstacles distinct to EPZs, three broad forms can be identified, namely legal exemption, weak law enforcement, and systematic exclusion. Accordingly, some countries specifically exempt EPZs from the reach of labour legislations or part thereof.¹⁸² When this happens, laws granting inferior labour protection usually follow, Freedom of Association being the last thing to include. The scenario can be best exemplified by the case of Bangladesh. Home to six big EPZs and against its commitments as a signatory to both conventions, the country exempted all EPZs from the application of labour laws, thus effectively denying Freedom of Association to its more than two million EPZs workers since 1989.¹⁸³ This continued up until 2004 where, under international pressure,¹⁸⁴ the government adopted EPZ Workers' Associations and Industrial Relations Act.¹⁸⁵ However, as a result of an equally strong resistance by the EPZ investors, the Act only allowed establishment of 'workers' representations and welfare committees'¹⁸⁶ instead of recognizing union rights as applied outside the zones. Further, besides the stringent legal requirements for their establishment, these committees are time-bounded and affiliation with federations beyond the respective zone is prohibited.¹⁸⁷ Despite some complaints to and strongly worded recommendations by the various ILO supervisory organs, the state of affairs does not seem to show progress yet. In a recent announcement, the manager of the country's EPZ is quoted as saying that they "...do not allow unions, only workers associations."¹⁸⁸

¹⁸¹ Gopalakrishnan (2007) p.11

¹⁸² Ibid. p.11 and ICFTU (2004) p.8

¹⁸³ Gopalakrishnan (2007) pp.11-12

¹⁸⁴ Beyond the condemnation by the ILO supervisory bodies, the threat by US and Canadian governments of denying commercial advantages are also said to have played a role in bringing about the law. See ICFTU (2003)

¹⁸⁵ Gopalakrishnan (2007) p.12

¹⁸⁶ Ibid.

¹⁸⁷ Ibid. p.15

¹⁸⁸ The Guardian (2012)

Similar stories of states submitting to investor pressure are many. For instance, in Malaysia, a threat from multinational corporations, which dominate the country's EPZs, resulted in halting an initiative to recognize the right to strike in the electronic sector.¹⁸⁹ In Namibia, due to pressures from the investors, a compromise meant that unions are allowed, but "strikes and lockouts would be outlawed" in EPZs.¹⁹⁰

Reliance on EPZs for countries also wrongly led them to exempt them from labour rights as 'essential services'. In Pakistan, EPZ industries are classified as producing 'essential services' and thus workers are prohibited from taking industrial action,¹⁹¹ a clear contravention of the strict understanding of 'essential services' under ILO. Sri Lanka also provides another instance of this model. With a decree ostensibly dubbed as 'Emergency Regulation', the entire garment export trade was declared as 'essential service' thereby preventing the workers engaged in these services from exercising the right to strike.¹⁹² Upon the insistence from the Committee for a strict use of the expression 'essential services' as illustrated in its cases, the government latter notified that the sector has ceased to be so considered as of June 1993.¹⁹³ In the same token, oil export zones in the Sudan are exempted from any of the laws allowing trade union rights due to their alleged importance to the economy.¹⁹⁴ In Togo, regulations pertaining to hiring and firing do not apply to EPZs.¹⁹⁵

Lastly, it suffices to mention in passing that countries like Zimbabwe, Kenya, Sri Lanka, Nigeria, and Colombia¹⁹⁶ have similar history at a certain point in time. In many instances, stern hostility towards union rights is pushed by EPZ firms with the threat of disinvestment as their weapon. As a reminder, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy provides that special incentives to attract foreign investment,

¹⁸⁹ Ethical Consumer (2007)

¹⁹⁰ Jauch (2008)

¹⁹¹ ICFTU (2003) pp.8-9

¹⁹² CFA Case No. 1620/1991

¹⁹³ CFA, 292nd Report, Case No. 1621 (Sri Lanka) paragraph 19.

¹⁹⁴ ILO (2013) p.173

¹⁹⁵ Milberg, (2008) p.32

¹⁹⁶ See ICFTU (2004) p.8 and Gopalakrishnan (2007) pp.23-31

EPZs being a typical case, should not include any limitation of the workers' Freedom of Association and Collectively Bargaining.¹⁹⁷

The second way of limiting Freedom of Association in EPZs involves soft application of the laws in such a way that they will have no or little effect, even if the general law of the country may be formally applicable to EPZs. Reports of such cases in many EPZ hosting countries are abundant. Apart from deliberate state acquiesce to anti-union practices in EPZs to appease investors, the enclave nature of many EPZs, which are generally heavily guarded, worsens the work of inspectors as entry is usually made difficult.¹⁹⁸ At times, the difficulty to access the zones is sanctioned by law. For instance, in Nigeria the law states "...no person shall enter into a zone without the prior permission from the concerned Authority."¹⁹⁹ This happens, despite the fact that Nigeria is signatory to ILO Labour Inspection Convention No.81 that empowers inspectors to enter any workplace "...freely and without previous notice."²⁰⁰ The ILO also notes that in Djibouti, not only are EPZs exempt from the competence of inspectors, but the law also grants excessive privileges to employers.²⁰¹ Denying entry to trade unions to EPZs, which is all common practice,²⁰² is still another scheme used.

Lastly, the composition of EPZ authorities, which oversee the functioning of these zones, is worth noting as it feeds the weak enforcement of the laws therein. Studies reveal that these authorities are dominated by officials from some ministry of trade, and "noticeably absent are officials from labour institutions."²⁰³ Indeed, a brief look at Kenyan,²⁰⁴ Pakistani²⁰⁵ and the proposed Ethiopian EPZ authorities establishment law²⁰⁶ reveals the scanty participation of labour representatives in an organ that is tasked with administering labour intensive industries.

¹⁹⁷ ILO Tripartite Declaration (1977) paragraph 46

¹⁹⁸ ICFTU (2004) pp. 9-10

¹⁹⁹ Gopalakrishnan (2007) p. 26

²⁰⁰ ILO Convention No. 81 Art.12(1(a))

²⁰¹ ILO (2013) p.560

²⁰² Milberg (2008) p.33

²⁰³ Romero (1995) p.248

²⁰⁴ Mars Group (2005)

²⁰⁵ EPZA (2010)

²⁰⁶ Addis Fortune (2012)

The third modality of encroaching on union rights in EPZs is indeed systematic. It is systematic in the sense that the exclusion of workers from the realm of relevant national/local laws safeguarding Freedom of Association do not emanate from the laws. Rather, government policies are bypassed by manipulating the workforce structure. Accordingly, outsourcing to home workers around the zones who often lack meaningful labour protections including union rights being the primary means,²⁰⁷ the inclination to choose more women workers has also been associated with this motive, as discussed above. As the ILO's 2008 Global Report puts it, "...use of labour through a third party contract concluded by employment agencies and subcontracting of work to home-based workers located near the zones also hamper attempts to increase unionization and collective bargaining."²⁰⁸ We can conclude that studies robustly demonstrate a lower degree of unionization in EPZs compared to non-EPZ firms and various forms of methods are in use to this effect.

The fact that many developing countries lack the necessary resources and personnel to regulate EPZs²⁰⁹ being understandable, many states seem to be giving in to the demands of current or potential investors. As Gordon and Turner would put it, "the world has become a huge bazar with nations peddling their workforce in competition against one another, offering the lowest price for doing businesses."²¹⁰

Two policy contradictions are noted in this regard. First, although contentious, the OECD studies have come up with a strong argument that any perceived added cost resulting from practicing union rights is well outweighed by its favourable impact on workers' motivation and productivity.²¹¹ This suggests that firms pushing against unionization and for inferior labour conditions, in general, go counter to their own economic interests. Second, EPZ hosting states that are compromising their labour conditions are also committing a policy contradiction.²¹² According to Endresen and Jauch, one of the stated aims of EPZs, i.e., creation of jobs and thereby improving

²⁰⁷ Endersen (2001) p.37

²⁰⁸ ILO (2008a) paragraph 195

²⁰⁹ ICFTU (2003) p.9

²¹⁰ Gordon (2000) p.61

²¹¹ Kuafmann, (2006) p.89

²¹² Endresen (2002) p.35

the living standard of the population, is being contradicted as a result of inferior labour conditions.²¹³

Despite these and similar tactics used to keep union rights and other labour standards at bay, reports show that increased awareness by consumers and interventions from international public and worker organizations are helping to reverse the trend and encouraging developments are registered, as discussed in the next chapter.

To sum up, working conditions in EPZs score mixed performance compared to other local firms with no zone status. While EPZs fare better on wages, excessive working hours and discriminatory practices on female workers seems evident. Whereas no conclusive trend is drawn on safety and health conditions, EPZs tend to provide inferior prospect for the career development of workers. Poor rating also prevails on the enforcement of Freedom of Association in EPZs. Lastly, what can be observed in many of the instances that show troubling labour conditions in EPZs is that the central problem has to do with non application or weak enforcement of laws. Intentional acts of states being visible, it should also be conceded that poor labour conditions in EPZs can also sometime well be an extension of the situation in the economy proper and indeed many countries lack the required resources to enforce labour laws in EPZs.²¹⁴

²¹³ Ibid.

²¹⁴ Milberg (2008) p.32

4 Chapter Four: The Role of the ILO on Working Conditions in EPZs (post 1998)

Having considered some of the main challenges in the implementation of selected ILO labour standards, we now turn to examine the place given to working conditions in EPZs, as a distinct subject matter, along the main functions of the ILO. Accordingly, some indicators that help us map developments in this regard will be used as far the available data allows. It is, however, imperative to first establish the mandate and relevance of the ILO in this regard.

4.1 ILO Mandate on EPZs Working Conditions

Despite the fact that EPZ workers, as a distinct group of workers, are not specifically addressed in ILO laws, establishing the mandate and the relevance of the Organization to engage in EPZ labor conditions is not daunting a task.

To begin with, EPZ workers are a concern for the ILO in their simple capacity as workers. This is so in the sense that the ILO is tasked with bringing about social justice through improved labour conditions of workers in general.²¹⁵ In addition, EPZs workers are vulnerable, especially in relation to some conditions like unionization.²¹⁶

Engagement on EPZ working conditions also bodes well with one of the ILO's core strategic objectives, namely 'securing full employment'²¹⁷ as EPZs create considerable jobs, which now is estimated around 66 million.²¹⁸ In support of this, the World Commission on the Social Di-

²¹⁵ The Preamble cum Art.1 of the Constitution read to this effect.

²¹⁶ The Global Report (2008) identified EPZ workers as vulnerable groups (para.6)

²¹⁷ ILO Declaration on Social Justice for a Fair Globalization, Part I, A (i)

²¹⁸ Milberg (2008) p. 4. Also ILO (2012a). It is to be noted that the ILO Maritime Labour Convention 2006, the latest standard to enter into force, for instance, pertains only to world's 1.5 million seafarers.

mension of Globalization specifically underlined the need to take strong action with respect to labour conditions in EPZs.²¹⁹

Besides, the Organization's 'solemn obligations' to "...examine and consider all international economic and financial policies and measures ... and take measures accordingly"²²⁰ can arguably lay a source of the mandate and indeed imposes a duty on the Organization. This is so as the very notion of EPZs involves broader international economic policy, i.e., focus on export-based economies, and thus warrants ILO's involvement to help ensure that labour gets some protection.

Lastly, the close relationship between trade and labour conditions on the one hand and the fact that trading systems like the WTO are shying away from taking labour protection as their concern renew and leaves the ILO's to remain the dominant actor in this regard.²²¹ The argument is predicated on the fact that EPZs are among the top scenarios, where the intricate relationship between trade and labour conditions comes to the fore. Related to this, the fact that hosting countries are competing for investors by, among others, offering inferior labour protection, makes intervention from the ILO crucial so that labour is not left to the mercy of economic players as any commodity.

As a result, the question really should not be if the ILO has a mandate but rather how the mandate is being carried out, which leads us to inquire the degree of consideration that EPZ workers have been given as a distinct group.

In this regard, records attest that the early 1980s was the time where the ILO began EPZ focused works in response to the growing evidences pointing deplorable working conditions in the same.²²² Expectedly, publication of researches and working papers, which lasted until late 1990s dominated the early activities.²²³

²¹⁹ Swepston (2005) p.19

²²⁰ Philadelphia Declaration, Paragraph II (d-e)

²²¹ Leary (2003) p.185

²²² Gordon (2000) p.71

²²³ Ibid. The ILO in 1998 indicated that there were 62 publications since 1981. (ILO 1998a, p.2)

An important step forward occurred in the fall of 1998 when the ILO convened a Tripartite Meeting of EPZs Operating Countries, where representatives²²⁴ of all the social partners, international public and non-governmental organizations met for the first time. As the minutes²²⁵ of the meeting reveals, participants explored the contribution of EPZs, social and labour conditions therein and suggested some interventions from the ILO. Accordingly, whereas EPZs were assessed positively on their employment generating objectives, complaints regarding excessive working hours, union rights difficulties, and discrimination of women workers were rampant.

Of more significance to the paper were discussions on possible interventions that participants demanded from the ILO. Accordingly, there was a sort of consensus that the problem in EPZs was that of enforcing existing laws and not a legal lacuna, even if a possible Convention on working hours in EPZs was suggested in the early discussions (para.10).²²⁶ Thus, the meeting demanded that there be stronger Freedom of Association guarantees and for inspectors to be well equipped and have access to EPZs. They also underlined the significance of ILO's assistance for states to enforce relevant laws. Also to note is the divergent understanding exhibited on the meaning of 'EPZs' (para.8). Given the wide participation and the importance of the subject matters discussed, the meeting is frequently, and indeed rightly, characterized as a defining moment in ILO's concerted engagement on EPZs and for the same reality it is taken as a reference year for this thesis too.

4.2 EPZs under the Major Functions of the ILO

The loosely but broadly crafted objectives and functions of the Organization as enshrined in the Constitution reflect its potential stretch and far reaching aspirations. Within the remits of these objectives, the ILO has been the principal organ at global level to protect labour for about a century now and it does so through its three permanent organs, namely the International Labour Conference, the Governing Body, and the International Labour Office. Under this main struc-

²²⁴ Heavyweight States on EPZs including China, Bangladesh, Costa Rica, Mexico, Mauritius, Sri Lanka sent their representatives.

²²⁵ ILO (1998b)

²²⁶ The suggestion was left out from the final list of demands.

ture, there are, of course, various permanent and *ad hoc* committees and organs that deal with the bulk of the work.

At this juncture, the *tripartite* decision making structure, a unique approach to the ILO that does not exist in other international organizations,²²⁷ merits a mention. The approach, which is reflected across many of the ILO organs, enables workers' and employers' representatives, along with government delegates²²⁸ to get involved in real decision-making processes. Established under the belief that "dialogue between workers and employers has a fundamental role to play in the development of society",²²⁹ it is usually credited to be the central source of ILO's legitimacy and even longevity.²³⁰ Primarily, the approach has the potential to balance the bargaining power between workers and employers right from the adoption of laws and setting of policies.²³¹ This, in turn, would help make decisions/standards more acceptable and thus enforceable. It is, however, criticized for complicating the works of the Organization and its legality under international law is also questioned.²³² In addition, the fact that representation in practice is restricted to organized workers and employers means that the non/less organized workers in the informal sector are excluded from the decision making.²³³ These shortcomings notwithstanding, *tripartism* is in general taken as the strength of the Organization.

With the three-tiered structure and oriented by *tripartism*, the functions of the Organization revolve around three pillars: standard setting, supervision, and technical co-operation/assistance.²³⁴ Even if of importance are also conducting researches and publication and dissemination of labour related information, below, we discuss the three main functions each followed by an assessment of how EPZs play out in the respective areas.

²²⁷ Kaufmann (2006) p.50

²²⁸ 'Social partners' is the usual expression used to refer to all three factions.

²²⁹ Hughes (2011) p.211

²³⁰ Ibid. p.5

²³¹ Novitz (2005) p.224

²³² Osieke (1985) pp.53-54

²³³ Maupain (2005) p.91 Also, Fenwick (2008) p.593

²³⁴ Leary (2001) p.184

4.2.1 ILO Standard Setting

Standard setting primarily involves the adoption of Conventions and Recommendations by the International Labour Conference.²³⁵ The Conference, where each Member State is represented by four delegates - two from the government and the remaining two representing workers and employers each - convenes annually.²³⁶ However, it is the Governing Body, which also reflects the tripartite composition,²³⁷ that mainly draws up agendas for the Conference.²³⁸ Besides the Governing Body, representatives of the social partners and any public international organization are eligible to initiate an agenda. (Art.14). It is also noted that international trade union organizations with consultative status at the Organization have also been active in this regard.²³⁹ This said, the cumulative reading of Arts.14 and 16(3) of the Constitution tells us that any agenda needs to pass through the Governing Body except where it originates from the Conference itself. The agenda may be for standard setting or other actions. In both cases, the International Labour Office usually prepares explanatory reports/documents on agenda items as envisaged under Art.10 of the Constitution.

If the agenda is for standard setting and passes objections,²⁴⁰ the Conference proceeds to decide the form that the proposal shall take – a Convention or Recommendation (Art.19(1)).²⁴¹ While a Convention is binding on member states that have ratified it, Recommendations remain non-binding and as such are not ratified. Despite such glaring differences, a similar procedure is followed in the adoption of Conventions and Recommendations. Principally, they both require two third majority vote of delegates present for their adoption (Art.19(2)). This way a standard comes into being and is afterwards sent to Members for ratification. It should be noted that uncommon in other instruments, the Constitution, inventively, imposes on Members to “...bring the Con-

²³⁵ ILO Constitution, Art. 19(1)

²³⁶ ILO Constitution, Art.3(1)

²³⁷ ILO Constitution, Art.7(1)

²³⁸ Hinted under the Constitution, Art.19(1) and Standing Order of the Conference, Art.(34)

²³⁹ ILO (1990) p.19. For instance, the Convention on Freedom of Association originated from WFTU's letter to the UN, which, in turn, referred it to the ILO for action. (Ibid, p.20)

²⁴⁰ It seems governments have the sole authority to object the proposal though the Conference can override it under Art. 16(1-2) of the Constitution

²⁴¹ Up until 1970 Recommendations were only a supplement to Conventions (Wisskirchen (2005, p.258.))

vention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.”²⁴² This being a rough presentation of the core process, in reality it involves many correspondences and heated debates on the details and usually takes four years to adopt a Conventions or Recommendation.²⁴³

These two instruments being the main sources of ILO labour standards, the Conference is also the author of the few non-binding declarations, which usually provide formal and authoritative policy statements by the Organization.²⁴⁴ With a wider application, Declarations are usually referred to as ‘informal labour standards.’²⁴⁵

4.2.2 Place of EPZs under the ILO Standard Setting

This section seeks to assess how working conditions in EPZs are featured in the ILO standards. As such, we pose a question: are EPZ working conditions governed? Here, the search, basically, needs to be for a specific ILO legal norm that exclusively deals with EPZ workers as all ILO legal standards are normally applicable to all workers unless provided otherwise. This leads us to ask a further question - how specific can an ILO standard get?

None of the Constitution, the Standing Orders of the Conference or Governing Body provides a clue as to what issues can make an agenda for standard setting. It appears that the assent of the various organs involved is what really decides the matters, with the Conference having the ultimate authority. This being so, the experience of the ILO shows that specific labour standards covering only particular sector of workers are all common. Such instruments are often justified in some sort of special circumstances that may relate to the respective workers or/and the activities they undertake such that a separate instrument becomes necessary. The uniqueness might have to do with the nature of the activities that might not fit into standard terms of generalist instruments. This was, for instance, one of the reasons for the latest standards on domestic workers. It might also emanate from special vulnerabilities that a certain workforce is exposed

²⁴² ILO Constitution, Art.19(5(a))

²⁴³ Wisskirchen (2005) p.257

²⁴⁴ So far, there are five ILO Declarations.

²⁴⁵ Gopalakrishnan (2007) p.7

to for various reasons and thus there is a need to supplement the generally applicable labor standers. Migrant workers can be instances in this regard. Other similar reasonable justifications, as decided by the organs involved in setting the standards, might also factor.

Following a similar line of argument, it will be natural to ask what possible ‘particularity’ may justify a possible separate standard on EPZs. Some features and difficulties that are prevalent in EPZs like problems of access to the zones, weak application of laws therein in general, long hours of work, the difficulties of unionization, over representation of women workers and discriminatory practices thereto and dominant presence of MNEs are the possible candidates that I can mention. But as things stand now, the ILO has adopted no specific legal standard on EPZ workers.

Which laws then are governing working conditions in EPZs? As noted above, the generalist Conventions and Recommendations, Declarations and observations of the different supervisory committees, as appropriate, apply to all workers including those in EPZs. Admittedly, those standards that are poorly enforced in EPZs are naturally more relevant than others. In addition, two of the ILO Declarations are also cited as particularly relevant to EPZs, namely the 1998 Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

The importance of the first Declaration lies in that many EPZ operating countries are not parties to many of Conventions constituting the four core principles and rights.²⁴⁶ The Declaration fills the gap as it requires all Member States to respect, promote and realize the fundamental Conventions, regardless of whether they are parties or not. As a result, these states are supposed to annually report on developments related to the implementation of the relevant fundamental conventions that they did not ratify. It is asserted that “they are also required to report specifically on the observance of these principles in EPZs.”²⁴⁷ In this regard, it is worth mentioning that this

²⁴⁶ Ibid.

²⁴⁷ Ibid. p.8

reporting obligation has a backing under the Art.19(5(e) of the Constitution²⁴⁸ that provides for the possibility of requesting reports on un-ratified Conventions. Even if the provision applies to all Conventions, the fact that there is no set pattern for reviewing under this provision justifies the well regulated follow up procedure of the Declaration. What is more, Freedom of Association and principle against discrimination, the two most poorly enforced areas in EPZs, are part of the Declaration and thus reinforces its relevance to EPZ workers.

The Declaration on Multinational Enterprises has also particular relevance to EPZs as the MNEs are the major players in EPZs. Among others, it provides, ‘[m]ultinational enterprises should observe standards of industrial relations not less favourable than those observed by comparable employers in the country concerned.’²⁴⁹ Through the periodic surveys on the implementation of the Declaration, it identifies challenges and suggests interventions. Thus, it is considered as an additional tool for the betterment of working conditions in EPZs. Lastly, despite the relevance of the 2008 Declaration on Social Justice for Fair Globalization to EPZs, as a recent phenomenon, it is only taken lightly here.

This being the state of the laws by now, there have been some attempts to specifically regulate working conditions in EPZs. For instance, during the 1998 Tripartite Meeting, it was suggested that the ILO formulate a new Convention regarding working hours in EPZs,²⁵⁰ even if it was not pursued. More recently, some developments are emerging that may eventually give rise to a separate standard on EPZs. Accordingly, after discussions of policy documents in 2003 and early 2008, the Governing Body decided in its November 2008 meeting on the possibility of general discussion on EPZs by the Conference. Following this, the Body’s November 2011 meeting saw ‘decent work in EPZs’ among the last seven candidate items to make to the 2013 Conference.²⁵¹ However, further meetings of the Governing Body prioritized other themes and EPZs

²⁴⁸ See also Art. II (B(1) of the Follow up to the Declaration.

²⁴⁹ Tripartite Declaration on MNEs (1977), paragraph 41

²⁵⁰ ILO (1998b) paragraph 8

²⁵¹ ILO (2011) paragraph 12

does not yet see the light of the day. As things stand now, the Governing Body will decide in November 2013 whether to place the topic to the 2015 International Conference.²⁵²

Even hoping that it will be so placed, it should be noted that the agenda, as it stands now, is not necessarily for a standard setting, but only for general discussion. Meaning, even if it is accepted by the Conference as an agenda, standard setting is only one of the possible outcomes as the Conference has many other options to pick from. Among others, adopting a resolution, requesting more information and further studies, or completely postponing without deliberation or else dropping the issue are all possibilities.

This said, some points can be added to highlight why it is less probable for a standard to emerge in the area in the near future. First, the overall recent trend at the ILO reveal that there is a little taste for new standards. Concerns about less ratification rates and weak implementation partly explain the decrease in the production of standards.²⁵³ For instance, the yearly average 2.23 Conventions between 1946 -1996 has decreased to less than 1.00 between 1996 to date. Indeed, the ILO has been under attack for many of its ‘too detailed’ ‘un-ratifiable’ Conventions, many of them concerning ‘specific sectors of workers.’²⁵⁴ As a result, many instruments were shelved as obsolete ones and many others withdrawn as receiving little acceptance.²⁵⁵ As the 1997 Report of the Director-General, who took up the issue of standard setting at length, reveals a fewer and targeted instruments with the highest ‘added value’ is the policy and standard setting should be a last resort.²⁵⁶ Related to this, the adoption of the 1998 Declaration with a shift in focus to few ‘core’ areas strengthens the argument.

Second, the fact that the usual complaints in EPZs have to do with weak or non-enforcement of existing laws makes new standards less appealing. Added to this is the fact that, as discussed

²⁵² ILO Helpdesk, email (August 20, 2013)

²⁵³ Wisskirchen (2005) p.262

²⁵⁴ Langille (2005) p.110

²⁵⁵ Wisskirchen (2005) p.263

²⁵⁶ ILO (1997) Part II

above, in comparison to the conditions outside the zones, EPZs do not always fare badly to demand a different legal norm.

Still, a technical barrier for a possible adoption of new standards in this regard can also be identified – challenge of devising an appropriate definition for ‘EPZs’²⁵⁷ in such way that it can be implemented with some degree of legal certainty. For instance, the 2004 ILO Global Report runs in part “as definitions can differ, there is some question as to the extent to which China’s special zones fit into the EPZ category.” Admittedly, the same issue can be asked now as Members are reporting on working conditions in their ‘EPZs’. However, unlike the current situation where reports are related to a certain Convention and EPZs are only one of the possible issues to report about, the adoption of a new instrument on EPZs would make the issue very concrete as it will decide whether to report or not after all.

Lastly, even if specific laws were to be adopted, difficulties with ratification is bound to surface as countries are competing for investment with inferior labour standards still a playing card.

In summary, despite all challenges and regardless of the possible outcomes of recent developments, it can be argued that the attempts to place EPZs as an agenda before the Conference, the highest organ in ILO, represent one of the bold actions concerning working conditions in EPZs from the ILO.

4.2.3 Supervision/Monitoring under the ILO

Supervision of Labour standards, the other main task of the Organization, mainly involves a regular system of examining reports and a ‘special procedure’ based on complaints. The separate supervision system for Freedom of Association issues can fall under the latter category.

To begin with reporting, Member States are obliged to report on the implementation of ratified Conventions as per Art.22 of the Constitution on different intervals. These reports are made according to the forms that the Governing Body prepares. The reports are first examined by the

²⁵⁷ILO (2004) paragraph 137

Committee of Experts, a Governing Body organ of 20 experts working on their personal capacity.²⁵⁸ While the Committee of Expert makes what is referred to as a ‘direct request’ on minor and technical misgivings, ‘observation’ is recorded in case of serious infringement. The first is sent to the concerned Member and the workers’ and employers’ organization from the same country for correction or additional information whereas observations are in addition published in the Committee’s annual reports to the Conference.²⁵⁹

The Committee of Experts may also identify some grave contraventions and pass it over to the Conference Committee on the Application of Standards for further follow up.²⁶⁰ This latter Committee is a tripartite organ constituted by the Conference as per Art.7(1) of the Constitution. The proceedings of the Conference Committee provide an opportunity for the representatives of the concerned government to explain on issues of concern before it makes a report to the plenary of the International Conference for adoption.

The reporting mechanism, as briefly described above, being the main supervisory mechanism, it is supplemented by the complaint procedures. Accordingly, Art.24 allows any employer or workers organization at any level to bring a complaint, called ‘representation’, alleging a Member State has failed to secure effective observance of a Convention it has ratified. The Governing Body, in such cases, forms a tripartite committee to examine the case. If this committee is not satisfied with the explanation, if any, of the member on the representation lodged, it publishes the representation, government’s replies (if any) as well as its views. It may also refer the case to the Committee of Experts and Conference Committees for further examination and interventions.

In addition, the Constitution provides a rarely used²⁶¹ interstate complaint mechanism under Art.26, where allegations of non-compliance with a ratified Convention can be brought by a

²⁵⁸ ILO (2012a) p.2

²⁵⁹ It is presented as Report III (Part 1A)

²⁶⁰ Usually around 25 cases are selected, Swepston (2009) p.331

²⁶¹ There has only been 13 complaints filed with this procedure. See NORMLEX information system at http://www.ilo.org/dyn/normlex/en/f?p=1000:50011:0::NO:50011:P50011_ARTICLE_NO:26

Member State that has itself ratified the Convention in question or delegates of the Conference, or else the Governing Body on its own. This may lead to the establishment of a Commission of Inquiry, the highest ILO investigative body, and ultimately to a possible action, which may be deemed important to secure compliance as envisaged under Art.33 as was the case for Myanmar in 2000.

Still on supervision, some words are in order concerning the special procedure related to Freedom of Association, a topic in focus. As discussed previously, this system stands out from the other special procedures on some grounds. First, it is not clearly provided for under the Constitution. It was rather devised by ILO/UN consultation as of necessity in 1951 after the enactment of Convention No.87. Second, unlike the other organs, it entertains complaints against any Member State regardless of whether it has ratified the Freedom of Association related conventions at hand or not,²⁶² a procedure the constitutionality of which has been intensively challenged in the past. Lastly, the combination of representation and expertise in the composition of the Committee is a plus. This is effected by appointing an independent expert chairperson while the rest represent the three social partners. Similar to that of a complaint system under Art.26, the Committee may in exceptional circumstances refer a recommendation to the Fact Finding and Conciliatory Commission, an *ad hoc* body of experts appointed by the Governing Body. It seems that such broad based standing and vast potential of respondents (all State Members) has helped it to examine more than 2300 cases that makes it the single most source of authority on Freedom of Association.

It should be noted that the various Declarations are also supervised through reporting. For instance, the Global Report analyzes one of the fundamental rights in the 1998 Declaration each year.²⁶³ So far, four such reports are produced on Freedom of Association and collective bargaining, i.e., 2000, 2004, 2008 and 2012. In addition, the same Declaration also requires an Annual Review be prepared, where the implementation of un-ratified Conventions pertaining to the four areas is assessed. In a similar fashion, the Declaration on MNEs is also surveyed in four

²⁶² Suwepston (2009) p.334

²⁶³ Hughes (2011) p.52

years interval and extensive information is collected from governments, MNEs, workers' and employers' organizations.

4.2.4 ILO Supervision and EPZs Working Conditions

In order to examine developments in relation to EPZ working conditions in the monitoring system of the ILO, I have used two indicators: whether reference is made to EPZ in the reporting forms or not and the number of 'observations' made by the Committee of Experts and that of the Conference Committee on issues related to working conditions in EPZs. Here, it should be underlined that 'EPZs' is recognized as a standard expression in ILO documents and have been used as a search key.

The inclusion or not in the reporting forms of a reference to EPZs is arguably an appropriate indicator since the information so requested is the basis for the reporting system. It also sheds light as to how their distinctive features is noted in the reporting system.

With this conviction, I made a review of the reporting forms²⁶⁴ for all the eight fundamental Conventions as well as three other selected Conventions based on their relevance to working conditions in EPZs, namely, Convention No.187 (2006) (Occupational Safety and Health), Labour Inspection Convention No 81 (1947), and Hours of Work Convention No.1 (1919). Accordingly, none of them contain a reference to EPZ. It would mean, among other things, that EPZ hosting Members would address the issue of EPZs in their own initiation unless they have been so required by the supervisory organs.

On the other hand, the reporting forms²⁶⁵ on Freedom of Association and elimination of discrimination for the Annual Report on un-ratified conventions as a Follow Up to the 1998 Declaration makes specific reference to EPZs. For instance, one of the questions asks whether the right to collective bargaining can be exercised with regard to, among others 'workers in export pro-

²⁶⁴ Report forms for many of the Conventions are available at http://www.ilo.org/dyn/normlex/en/f?p=1000:14002:3299038144309569:::P14002_INSTRUMENT_SORT:1

²⁶⁵ The Reports forms are available at http://www.ilo.org/declaration/follow-up/annualreview/Reportforms/WCMS_100453/lang--en/index.htm

cessing zones (EPZs) or enterprises/industries with EPZ status.²⁶⁶ Incidentally, the absence of reference to EPZs in the report forms pertaining to child and forced labour areas is reflective of the fact that unionization hurdles and incidents of discrimination are more severe in EPZs to secure a specific mention.

The same trend follows on the reporting forms for the Global Reports.²⁶⁷ Accordingly, in all three of the accessible reports on Freedom of Association and Effective Recognition of Collective Bargaining for 2000, 2004 and 2008, EPZ workers are identified among the specific groups facing barriers to organize. Manifestations of the challenges and some instances of success stories and future activities are discussed.

Lastly, a stark difference is noted on the reporting forms/questionnaires for the MNEs Declaration. While the form used for the eighth survey that came out in 2003 posed a specific question on working conditions in EPZs,²⁶⁸ the questionnaires preceding it did not.

The number of observations by the Committee of Experts in relation to EPZs, available in NORMLEX, an ILO searching system, also throws some light on the growing presence of the subject matter on the supervision machinery. Accordingly, whereas 38 observations were made between 1990 to 1997, the number grew to 51 during the years 1999 to 2003. Moreover, 140 observations are entered from 2004 to 2011. Some hypothesis can be made on the surge in observations. The rising number of EPZs and the number of countries ratifying relevant conventions can be among the possible explanations. The increasing visibility of the subject matter after the 1998 meeting is also another factor with the capacity to affect the result. Moreover, it can also be argued that the ILO's awareness creation and assistance should have something to contribute to the surge.

²⁶⁶ ILO (2012b), Q.3.1.(g))

²⁶⁷ ILO (undated, Q.2.1.(g))

²⁶⁸ ILO (2005) Appendix 1, Q.28. p.149

Substance wise, the complaints reveal a wide array of challenges that EPZ workers are facing, many of which relating to union rights. For instance, the report of the Committee of Experts' to the 2013 Conference covers cases like killing of union leaders and firing of workers for practicing union rights in Bangladesh;²⁶⁹ delay in the enforcement of laws pertaining to EPZ workers in Pakistan (p.135); allegations of replacing trade unions with non independent company unions in the Philippines (p.148); difficulties of EPZs trade unions to meaningfully participate in collective bargaining in Sri Lanka (p.171); exemption of EPZs from union rights laws in the Sudan (p.172); non recognition of trade unions in Swaziland (p.175); and denial of access to the zones to inspectors in Djibouti (p.561).

Notable in these cases is the thoroughness of the discussion and specificity of demands by the experts. What is more, the Committee of Experts, excepting for Bangladesh whose case was referred to the Conference Committee for further information,²⁷⁰ welcomes some developments in the countries mentioned. This was especially so with Nigeria for the commencement of unionization in its EPZs.²⁷¹ It is also encouraging to note that many of them have provided the information the experts requested earlier. Besides, the experts do not spare a chance to offer technical assistance in as many occasions.

It is of interest to note that the same Committee has earlier noted with satisfaction that a Namibian law that had prohibited industrial action in Namibia has lapsed.²⁷² Similar favourable developments are also recorded in Turkey, Sri Lanka and Dominican Republic.²⁷³

A similar increase in the number of cases reaching the Conference Committee over time is also discernible. Accordingly, data from NORMLEX shows that the Conference Committee has addressed some 68 cases involving EPZ working conditions since 1988. The number grew from 29 during the period of 1990 to 2000 to 39 in the last decade ending 2011. This, among others, points to the existence of serious violations, as the Conference Committee only examines few

²⁶⁹ ILO (2013) p.56

²⁷⁰ The recent deadly fire that broke out in a factory in Dahka, Bangladesh, seems to have played a role in the referral.

²⁷¹ ILO (2013) p.130

²⁷² ILO, (2008) paragraph 199

²⁷³ Ibid. paragraphs 199-200

but serious cases. It is of interest to note that more than half of these cases involve either or both of the Conventions on Freedom of Association and Collective Bargaining.

Lastly, the number of cases handled by the Committee on Freedom of Association, too, being on the rise, what is distinct with its conclusions is the way they minutely follow up the efforts given to its recommendations up until the closure of the case. Equally important to notice is the fact that cases sometimes stay active for over a decade with the Committee seizing the matter.²⁷⁴

4.2.5 Technical Cooperation/Assistance

Lastly, an area that may help us examine ILO's intervention on working conditions in EPZs is what is usually referred to as technical assistance or cooperation. This function, which defies any single description, can be traced to Art.10 (2 (b)) of the Constitution. The provision obliges the International Labour Office, among others to “ accord to governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection” under the guidance of the Governing Body.

Thus, the assistance keeps Members' needs at its center and seems to cover a wide range of activities as ‘administration’, under Art.10, might mean a lot. As one of the permanent agendas for the Conference (Agenda 6), it is claimed that technical cooperation programs normally consume over half of the ILO's annual Budget and cover activities in some 140 countries.²⁷⁵ The ILO uses a network of regional, area and branch offices in more than 40 countries to implement the various technical assistance and thereby “has visible and active presence within those Member states in most need of its support and expertise.”²⁷⁶ It usually involves other International Organizations like the UN, World Bank, IMF and others in running these programs. Leaving aside the details of its execution, suffices to state here that technical assistance/cooperation programs have a wide reach and are meant to help states in advancing labour and social rights.

²⁷⁴ For instance, CFA, Case No.2228

²⁷⁵ Hughes (2011) p.29

²⁷⁶ Ibid. p.29

The adoption of the 1998 Declaration and its emphasis on promoting standards gives technical assistance a prominent role to play. The Declaration, under Art.3, makes this clear in that need-based support of the ILO is the principal way of executing the obligations that the Members assumed under the Declaration. In line with this, more than 50% of the ILO technical assistance relates to the implementation of the four core labour standards in recent years.²⁷⁷ The ILO Declaration on Social Justice for a Fair Globalization, also specifically refer to ‘technical assistance and expert advice’ as a tool to achieve its objectives.²⁷⁸ It, therefore, becomes relevant to examine how EPZs play out in the technical assistance programs of the ILO.

4.2.6 EPZs under ILO Technical Assistance

Various reports point to ILO’s technical assistance involvements on EPZ working conditions. These include many of the Global reports as well as other ILO documents prepared exclusively for EPZs initiatives. For instance, a 2003 ILO report²⁷⁹ lists illustrative technical cooperation and advisory services with respect to EPZs. Many of them are meetings and trainings given to the social partners from EPZ hosting countries from Asia, Africa, Latin America and the Middle East.

There has also been distinct and large-scale technical cooperation programs, which are meant to improve various aspects of labour conditions in EPZs. In 2009 for instance, the ILO started a technical cooperation project named “Promoting Fundamental Principles and Rights at Work in Sri Lanka”²⁸⁰ The project was initiated after repeated comments from the ILO Committees, where “many of these comments were focused on anti-union practices in Export Processing Zones” therein.²⁸¹ Accordingly, the project, which stayed for two years, had the improvement of working conditions in EPZs as one of its core objectives. Another technical cooperation on Jordan’s Industrial zones is also to be mentioned.

²⁷⁷ Suwepston (2009) p.337

²⁷⁸ ILO (2000) Part II, A (ii)

²⁷⁹ ILO (2003) Appendix II

²⁸⁰ ILO, Information available at http://www.ilo.org/colombo/whatwedo/projects/WCMS_126066/lang--en/index.htm

²⁸¹ Ibid.

Moreover, in the Medium Strategic Framework (2010-2015) that the ILO adopted, EPZs are given a separate entry, where the Organization, among others, aims to take significant actions to introduce union right in EPZs in six countries in the span of five years.²⁸² It, furthermore, aspires to help, at least 18 countries, implementation Freedom of Association and collective bargaining rights, including in EPZs by 2015.”²⁸³ These are indicative instances as establishing a trend is not forthcoming mainly due to the diverse forms that such assistances take, making search for progressive developments daunting.

Lastly, my research into the budget and programs of the ILO from 2000/1 onwards reveals that it was only since the budget years of 2004/5 that EPZs has got a specific mentioning, which shows the progressive prominence that they have obtained in the works of the ILO. Of special importance was the Program and Budget for Biennium 2006/7, where an Infocus Initiative on EPZs was put in place with a budget of USD 200,000 that eventually resulted in more studies and a database on the area.²⁸⁴

²⁸² ILO (2009) paragraph 69, Indicator 14.2

²⁸³ Ibid.

²⁸⁴ ILO (2008b)

5 Conclusion

For some decades now, export oriented economic policies have taken root as a feasible option for many countries. To this effect, a scheme by the name Export Processing Zone(s) was devised, where investors engaged on selected produces mainly destined for export are granted with generous incentives of fiscal and other forms. Ostensibly, labour has also been among these incentives.

Typically supervised by a separate governmental authority, EPZs aim, among others, at creating jobs, facilitating transfer of technology, and boosting foreign earnings. Noble as these objectives may be, challenges remain in turning them into reality, and especially so in relation to the quality of jobs EPZs offer. Surveys, which usually compare working conditions in EPZs with that of similar local firms with no zone status, demonstrate that while EPZs provide a better wage, long hours of work and hostility towards union rights are prevalent. Of equal concern has also been alleged discriminatory practices against female workers who still dominate the workforce in EPZs. Moreover, what transpires from many of the findings of inferior labour conditions in EPZs is that the main challenge remains lack of implementing existing laws.

As much as states bear the prime responsibility to ensure a decent work, the ILO occupies a special place at a global level and EPZ workers, as any group of workers, falls within its competence. The facts that EPZs hire considerable workforce and that competition among countries in a bid to attract investors by offering inferior labor conditions is putting workers in a precarious situation, reinforce ILO's legitimacy to get involved in the area.

In line with this, the Organization has been undertaking some activities pertaining to working conditions in EPZs from the early 1980s. From undertaking a series of research works during the first two decades, it went to convene a tripartite meeting in 1998, where social partners from EPZs hosting countries discussed important aspect of EPZ working conditions.

From this time on, visibility of EPZs in ILO activities increased. Among others, discussions in the Governing Body that lastly led to attempts of tabling ‘working conditions in EPZs’ as an agenda for the Conference, the highest body in ILO, is a notable development. Even if the tabling did not happen as of yet, it, however, symbolizes an important leap on the area as it might eventually lead to a separate standard or, at least, some other positive interventions. On the possibility of a standard for EPZ workers, however, I demonstrated that chances are slim. Among others, the facts that there is low appetite for new and specific standards in the ILO; that EPZs do not always perform bad, and indeed they fare better in some working conditions; and, most importantly, that the chief challenge in trying to ensure better working conditions in EPZs remains to be implementing existing laws and not that of legal lacuna, support the less likelihood of a new instrument.

On the supervisory function as well, progressive visibility of EPZ is discernible. The issue of working conditions in EPZs is making its way into report forms of many instruments. This is especially so for the follow up procedures of the 1998 Declaration, which prominently pertains to, among others, Freedom of Association and non-discrimination rights, the two most troubled rights in EPZs. The same holds true for the MNEs Declaration. However, all the sample report forms for ILO conventions that I used do not make a reference to EPZs. It appears that it is left to the initiation of the reporting member state and most importantly to the active and increasingly thorough observations and demands of, mainly, the Committee of Experts and the CFA. In this regard, I have shown that there is an evident increase in the number of observations on EPZs from the Committee of Experts and the Conference Committee. The same trend of increment of cases was also demonstrated with the CFA, according to the data from NORMLEX, an ILO searching system, which duly recognizes ‘EPZs’ as a standard expression.

Technical assistance, which is becoming an increasingly important tool to help enforce labour standards, is very relevant to working conditions in EPZs. This is so as some hosting states do not have the needed skills and resource to enforce their laws in EPZs, where big multinationals dominate. In this regard, even if data which can help us map the trend was not forthcoming, recent EPZ focused projects point to meaningful intervention from the ILO. The fact that a sepa-

rate entry is made on EPZs in the budget plans of the ILO since 2004/5 is yet another strong indicator of EPZs' increasing visibility in the works of the Organization.

This said, challenges remain. It was demonstrated that violations of labour right in EPZs continued unabated. Whereas many of the infringements are special to EPZs, some of them are an extension of the problems in the economy proper. On the former, exemption of EPZs from the purview of labour laws and deliberate non or weak enforcement of laws are the principal tools countries are utilizing to retain and attract more investment. As such, incidents of denial to inspectors and union leaders of access to closed type zones, firing striking workers, non-recognition of unions, inferior conditions for women workers, and attacks on union leaders are among the top complaints lodged.

Nonetheless, some recent developments have thrown some glimpse of hope towards improvements in these conditions. Regarding this, the ILO has noted some countries abolishing hostile laws, the recognition of unions in some EPZs, and increased tripartite dialogues with the help of ILO's assistance are some of the notables. Lastly, it would be safe to conclude that growing ILO's involvement in EPZs working conditions is visible in many aspects, and the Organization is expected, and indeed advised, to remain seized of the matter, mainly through supervision and targeted technical assistance.

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